

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



(202) 671-1394-Voice
(202) 673-6402 - Fax

CRB No. 06-009

ETHEL M. EDMONDSON,

Claimant – Petitioner,

v.

PBE III, INC. AND THE HARTFORD,

Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
OHA No. 005-330, OWC No. 609747

Heather C. Leslie, Esquire for the Petitioner

David O. Merkin, Esquire, for the Respondent

Before LINDA F. JORY, SHARMAN J. MONROE AND FLOYD LEWIS, *Administrative Appeals Judges.*

LINDA F. JORY, *Administrative Appeals Judge*, on behalf of the Review Panel

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code § 32-1521.01 and § 32-1522 (2004), 7 DCMR § 230 (1994), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹ Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 20024, Title J, the Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994) *codified at* D. C. Code Ann. §§ 32-1521.01, 32-1522 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

Pursuant to 7 D.C.M.R § 230.04, the authority of the Compensation Review Board extends over appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on October 19, 2005, the Administrative Law Judge (ALJ), concluded symptoms resulting from Claimant – Petitioner (Petitioner)'s March 14, 2005 work injury resolved on August 2, 2005; Petitioner was fully capable of returning to her pre-injury employment; medical expenses Petitioner incurred after August 2, 2005 were not reasonable and necessary; and Petitioner's treatment with a D.C. Chartered Health Center was not a selection of a physician within the meaning of D.C. Official Code §32 -1507(b)(3).

As grounds for this appeal, Petitioner alleges the ALJ erred in not deferring to the opinion of the treating physician who has opined that she remains temporarily and totally disabled. Employer responds asserting that because the ALJ properly provided a well specified and detailed opinion as to why he credits the non-treating physician over that of the treating physician's opinion, the Compensation Order denying any additional benefits after August 1, 2005 should be affirmed. Neither party opposes the ALJ's conclusion that Petitioner's treatment with the a D.C, Chartered Health Center did not constitute a selection of a physician pursuant to §32-1507(b)(3).

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, the Panel) as established by the Act and as contained in the governing regulations is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. D.C. Official Code § 32-1521.01(d)(2)(A). "Substantial evidence", as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. District of Columbia Department of Employment Services* 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB and this panel are bound to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review, substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

The ALJ acknowledged this jurisdiction's treating physician's preference and the requirement that the ALJ must provide specific reasons for rejecting a treating physician's opinion,² but

² See *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992). See also *Estella Whitaker v. Washington Metro Transit Authority*, Dir. Dkt. No. 91-12, H&AS No. 90-813.

proffered that Dr. Dorn's placement of Petitioner on total disability without any objective findings was predicated simply on what claimant subjectively complained to him and further detailed:

Subsequently as shown by the June 17, 2005 follow up, even though claimant's physical therapy was discontinued and her EMG was normal, Dr. Dorn still certified her as completely disabled from May 20 to June 17, 2005. Dr. Dorn's medical reports are deficient insofar as specifying claimant's physical restrictions in performing the duties of her employment. None of Dr. Dorn's reports articulated how the continued symptomatology that purportedly afflicts claimant would impact upon her ability to carry out the duties of her usual employment as a utility worker. In other words, none of Dr. Dorn's reports of record reflected what it was that claimant could or could not do in her usual employment with her continuing pain. Thus, in light of the normal diagnostic findings, Dr. Dorn's opinion is not deserving of any significant weight traditionally accorded to the treating physicians.

CO at 6.

The ALJ further stated that at the Formal Hearing, Petitioner testified that it was her lower back which was bothersome and disabling. However, the supporting evidence such as the diagnostic tests, x-ray, ultrasound, nerve conduction studies and EMG failed to objectively corroborate her continuing complaints of pain thus, absent any objective corroboration of claimant's complained of symptomatology, claimant's testimony could not be found to be credible and reliable.³

The Panel concludes that the evidence of record, as well as the cited Court of Appeals decision in *Canlas v. District of Columbia Department of Employment Services*, 723 A.2d 1210, 1212 (D.C. 1999), supports the ALJ's reliance on Dr. Levitt's deduction that Petitioner was at maximum medical improvement and had unrestricted ability to return to her pre-injury employment. The Panel further concludes the evidence supports the ALJ's statement that Dr. Levitt's deduction was predicated upon his thorough examination of Petitioner as well as a detailed evaluation of the entire medical record, including x-rays and EMG study. The evidence of record further supports the ALJ's conclusion that the IME physician's opinion is inherently more consistent and reliable and deserves to be credited with significant weight. CO at 6. Accordingly, having reviewed the record evidence, the Panel agrees the findings of fact and conclusions of law contained in the Compensation Order are supported by substantial evidence of record and the ALJ committed no error of law.

³ It is well settled in this jurisdiction, when faced with contradictory testimony, the ALJ evaluates the credibility and demeanor of witness and draws conclusions based on that evaluation. Moreover, as the Court of Appeals has emphasized, it is widely accepted that when a fact finder's conclusions are based on credibility findings those conclusions are entitled to great weight. *Dell v. Department of Employment Services* 499 A.2d 102 (D.C. 1985).

CONCLUSION

The ALJ's conclusion that Petitioner was fully capable of returning to her pre-injury employment without restriction as of August 2, 2005 and the medical expenses incurred after August 2, 2005 were not reasonable and necessary nor causally related to the injury Petitioner sustained to her right knee on February 17, 2001, is supported by substantial evidence of record, and is in accordance with the law.

ORDER

The Compensation Order issued on October 19, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

LINDA F. JORY
Administrative Appeals Judge

January 5, 2006
DATE